

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MOONBUG ENTERTAINMENT
LIMITED, et al.,

Plaintiffs,

v.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD, et al.,

Defendants.

Case No. [21-cv-06536-EMC](#)

**ORDER RE CLOSING
DEMONSTRATIVES**

Docket Nos. 564, 565

The Court has reviewed the parties' objections to closing demonstratives. The Court makes the following rulings.

IT IS SO ORDERED.

Dated: July 23, 2023



EDWARD M. CHEN
United States District Judge

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S DEMONSTRATIVES

Slide No.	Slide Title	P's Objections	Court's Rulings
13	Moonbug Wants to Force BabyBus Out of the Market	Not in evidence/403 (misleading heading), issue of injunction is for Court to decide as an equitable remedy, not properly before the jury	SUSTAINED. Speculative as to Moonbug's mindset. FRE 602.
103 /104	After Filtration – Only Own Particular Expression	Not in evidence/402/403(misleading)	OVERRULED. Appears to be rom-com screenshots (one is from 500 Days of Summer) of a conversation at a diner booth. Appropriate for demonstrative purposes; need not be in evidence.
152	Moonbug's Key Personnel Did Not Appear; BabyBus' Did	The parties continue to meet and confer over a dispute on this issue.	JUDGMENT RESERVED.
165 - 166	Video-By-Video Comparison Shows No Effect on CoComelon	Not in evidence, Court specifically did not admit Exhibit 3014 into evidence	OVERRULED. Appropriate for demonstrative purposes; need not be in evidence.

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S DEMONSTRATIVES

Slide No.	Slide Title	D's Objections	Court's Rulings
39	[Image of CoComelon images, videos, links in Babybus' development files]	403; confusing to the jury to suggest that images/videos/links in files can be basis for liability. If allowed, BabyBus requests a limiting instruction that images/videos/links cannot as a matter of law be infringing: Evidence that BabyBus downloaded copies of CoComelon videos or captured images from those videos may be considered to establish whether copying factually occurred, but it may not be	OVERRULED. Files of CoComelon in Babybus' files is probative of willfulness, which outweighs any prejudicial effect of implying that they in themselves constitute copyright infringement.

		<p>considered as evidence in applying the extrinsic or intrinsic tests. In other words, copies on BabyBus servers or in its internal documents do not themselves constitute copyright infringement.</p> <p>Explanation: This additional instruction is necessary so that the jury does not improperly apply copyright law to have extraterritorial effect. Plaintiffs' Opposition to Defendants' Motion For Judgment As A Matter of Law (Dkt. 546-24) confirms this:</p> <p>V. MOONBUG DOES NOT SEEK A REMEDY FOR THE DEFENDANTS' MAKING AND STORING COPIES OF COCOMELON'S IMAGES AND VIDEOS IN THEIR DEVELOPMENT FILES IN CHINA</p> <p>Moonbug's arguments have made clear that its infringement case is focused on Defendants' uploading, publicly displaying, publishing and distributing their infringing Super JoJo videos on U.S.-based platforms such as YouTube, Roku, Amazon, and through their Apps in the U.S. However, information on Defendants' maintenance of volumes of CoComelon images in videos in their development files is probative of Defendants' copying of CoComelon in the accused Super JoJo videos that were uploaded, publicly displayed, published, and distributed in the US. This evidence is highly probative of Defendants' willfulness.</p>	
91, 140	Slide 91: Swimming Song [including question and answer of Naiyong Yan about referencing and copying]	Improper state of mind testimony	<p>OVERRULED as to Slide 91. Does not improperly speculate on state of mind; quotes Mr. Yan, who is a party opponent.</p> <p>SUSTAINED as to Slide 140. Krause's personal belief as to the persuasiveness of the</p>

	Slide 140: [including question and answer of Fran Krause about believing the independent development defense]		independent development theory is improper.
94-97	Rock-a-Bye Baby, Sick Song, Wheels on the Bus, Traffic Safety Song, Winter Song, Hello Song, Teacher Song, Shape Song, Thank You Song, Soccer Song, Animal Characters [including screenshot comparisons between the works]	403, mischaracterizes evidence; none of these comparisons were made during trial.	OVERRULED, as Moonbug can ask the jury to make their own comparisons for the intrinsic test.
114	CoComelon Work...Compare With Super JoJo [listing exhibit numbers]	403, mischaracterizes evidence; no testimony about these CoComelon works or BabyBus accused works.	OVERRULED.
127	[image of timeline from 2021-2023]	403; September 9, 2021 entry "BabyBus sends false counternotice, relying on DouDou" is not the subject of Plaintiffs' 512(f) claim (Dkt. 496); confusing, misleading, and unfairly prejudicial to suggest this counter notice can be the basis of liability under Section 512(f). 403; July 7, 2023 entry July 7 "Mr. Yan admits to plagiarizing" mischaracterizes the evidence. Mr. Yan's testimony was limited to 26 thumbnails.	OVERRULED. May be used to show intent.
128	[including question and answer of Naiyong Yan]	403, mischaracterizes evidence; this counter notification is not the subject of Plaintiffs' 512(f) claim (Dkt. 496); confusing, misleading,	OVERRULED. Transcript references the Super JoJo Yes Yes Playground Song, which is

	about good faith basis about the disabling of the Super JoJo Yes Yes Playground Song]	and unfairly prejudicial to suggest this counter notice can be the basis of liability under Section 512(f).	the video at issue in the 512(f) claim. Quotes Mr. Yan, who is a party opponent.
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